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*Attorneys for Defendant  
EV Group E. Thallner GmbH.*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Silicon Genesis, Corp.,

Plaintiff,

vs.

EV Group E. Thallner GmbH.,

Defendant.

Case No. 3:22-cv-04986-JSC

Hon. Jacqueline S. Corley

**UPDATED JOINT CASE  
MANAGEMENT STATEMENT**

Date: May 19, 2023  
Time: 9:00 a.m.  
Courtroom: by Zoom

1 Pursuant to the Court's April 20, 2023 Order (ECF No. 55), Plaintiff Silicon Genesis Corp.  
2 ("SiGen") and Defendant EV Group E. Thallner GmbH ("EVG") hereby submit this updated joint  
3 case management statement.

4 The parties filed a fulsome joint case management statement on February 23, 2023. ECF  
5 No. 37. Accordingly, they assume that the request in the April 20 minute order was merely for an  
6 update as to the posture of the case.

7 **SiGen's Report:**

8 **A. MEDIATION**

9 The parties attended a several-hour mediation on April 6, 2023 with Mr. Patrick Robbins.  
10 Mr. Robbins has tenaciously followed up with both sides a number of times since that date, but no  
11 breakthroughs have been made.

12 **B. STATUS OF PLEADINGS AND MOTIONS**

13 Following the Court's April 20 denial of EVG's motion to dismiss (ECF No. 54), EVG filed  
14 its Answer on May 4. ECF No. 58. EVG's Answer includes two counterclaims against SiGen for  
15 breach of contract, as to which SiGen will file a combined Motion to Dismiss and Anti-SLAPP  
16 Motion to Strike by no later than May 25. SiGen filed a demand for jury trial on May 8. ECF No.  
17 59.

18 There are no other pending motions as of today's date, but SiGen expects that a joint  
19 discovery dispute letter regarding EVG's responses to SiGen's first set of document requests will  
20 be pending by the time of the upcoming CMC on May 19.

21 **C. DISCOVERY**

22 Written discovery is ongoing. SiGen has served a second set of document requests and first  
23 set of interrogatories, and EVG served its responses on May 8. SiGen has requested to meet and  
24 confer regarding EVG's responses, but a date has not yet been agreed.

25 For its part, EVG has served its own second set of document requests, and first set of  
26 interrogatories. SiGen's responses are due on May 29.

27 **D. SCHEDULE**

28 The Court has issued a Pretrial Order setting out the following schedule:

Event	Date
Deadline for Court-Sponsored Mediation	April 11, 2023
Deadline to Move to Amend Pleadings	May 1, 2023
Fact Discovery Cutoff	August 31, 2023
Expert Witness Disclosures	September 22, 2023
Rebuttal Expert Witness Disclosures	October 20, 2023
Expert Discovery Cutoff	November 17, 2023
Deadline to file dispositive motions	January 11, 2024
Dispositive Motions Oppositions	February 1, 2024
Dispositive Motions Oppositions Replies	February 15, 2024
Hearing on Dispositive Motions	March 7, 2024 at 10:00 a.m.
Pretrial conference	June 21, 2024 at 2:00 p.m.
Trial	June 28, 2024 at 8:30 a.m.

#### **EVG's Report:**

**A. Mediation and Settlement Discussions.** On April 6, 2023, EVG's principals, Mr. Hermann Walzl and Mr. Paul Lindner, attended the mediation meeting on behalf of EVG and met with the mediator, Mr. Patrick D. Robbins, by video conference. EVG's counsel attended the mediation meeting in person in San Francisco. The mediation meeting lasted approximately 4 hours and involved a productive discussion and dialogue, as supported by the certification filed by Mr. Robbins. Dkt. 51. The parties are continuing discussions with Mr. Robbins, in an attempt to reach a resolution.

**B. Discovery.** To date, EVG has produced 3,946 documents, containing 11,305 pages, and SiGen has produced 899 documents, containing 5,943 pages. The documents confirm that there is no credible evidence in support of SiGen's position that a "sale" occurs upon the signing of a Purchase Order.<sup>1</sup> In contrast, there is substantial evidence in support of EVG's position that a "sale" occurs once title to the product transfers to the customer and EVG has been paid in full.<sup>2</sup>

<sup>1</sup> E.g., SIGEN 002478, 002691, 003808.

<sup>2</sup> E.g., SIGEN 000035, 000136, 000182, 000205, 000333, 000646.

1 Included within the 11,305 pages of documents that EVG has produced to SiGen, and shared  
 2 with mediator Robbins, is information identifying the Purchase Order date, shipment date and final  
 3 payment date for each transaction in question. Also included with the production is EVG's standard  
 4 114 page customer contract, which includes a Scope of Delivery, Agreement of Sale, Source  
 5 Inspection Protocol and Acceptance Test Protocol.

6 A troubling issue has arisen in documents recently produced by SiGen. In correspondence  
 7 with accounting firm KPMG in 2019, and in an internal SiGen Power Point presentation from 2017,  
 8 SiGen is actively attempting to end-run the customer Non-Disclosure Agreements (NDAs) that  
 9 EVG has with its customers. In both documents, SiGen's founder and CEO, Ted Fong, is seeking  
 10 the names of EVG customers despite knowing that it would cause EVG to violate the NDAs with  
 11 those customers. Fong, knowing that he is not permitted under the License Agreement to obtain  
 12 that information from EVG, requested that KPMG do his bidding for him.<sup>3</sup> This is not a new  
 13 strategy by SiGen. It turns out that years earlier, Mr. Fong actually suggested filing a lawsuit in  
 14 order to obtain EVG's customer names so that SiGen could approach EVG's customers to attempt  
 15 to sell SiGen's products.<sup>4</sup> This newly-uncovered evidence is concerning because SiGen appears to  
 16 be using the same tactic in this case, seeking broad discovery and customer names, while refusing  
 17 to agree to an Attorneys' Eyes' Only protective order that would allow additional documents to be  
 18 produced for review by counsel, but not Mr. Fong. It is EVG's strong position that this Court  
 19 should not be used for that type of gamesmanship.

20 **C. SiGen's Unfounded, Newly Added Claim.** In response to SiGen's newly added  
 21 unfounded claim for royalties supposedly due on other products, EVG is preparing a declaration of  
 22 its Executive Technology Director to explain why there is no basis to this allegation.

23 **D. EVG's Answer and Counterclaims.** EVG filed its Answer to SiGen's Second  
 24 Amended Complaint on May 4, 2023. EVG included counterclaims against SiGen for breach of  
 25 the Patent License Agreement and the 2020 Settlement and Release Agreement.

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27 <sup>3</sup> SIGEN 000027, 004314, 004479.

28 <sup>4</sup> SIGEN 005888.

Date: May 12, 2023

/s/ Mark Poe

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Respectfully Submitted,

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*Attorneys for Defendant  
EV Group E. Thallner GmbH.*

**ATTESTATION OF SIGNATURE**

I attest under penalty of perjury under the laws of the United States of America that I have received the concurrence in the filing of this document from the listed signatories as required by Civil Local Rule 5-1(i)(3).

Dated: May 12, 2023

/s/ Mark Poe

Mark Poe